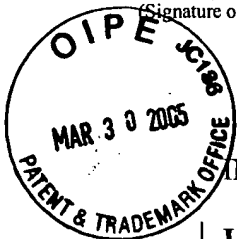


"Express Mail" Mailing Label Number: ED 191918858 US

Date of Deposit: March 30, 2005

I, Eustathios Vassiliou, hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Eustathios Vassiliou
(Signature of person mailing paper or fee)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN THE APPLICATION OF:

LOWRY AND VASSILIOU

DOCKET NO.: AN18D1

APPLICATION NO.: 10/729,152

GROUP ART UNIT: 3676

FILED: DECEMBER 05, 2003

EXAMINER: CARLOS LUGO

**FOR: SPRING FASTENER HAVING MULTIFUNCTIONAL BARBS ORIGINATING
AT THE SIDE OF THE NECK OR LEG PORTION**

**DECLARATION UNDER 37 CFR 1.132
OF EUSTATHIOS VASSILIOU**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Eustathios Vassiliou, hereby declare:

That I hold a Bachelor of Science Degree in Chemical Engineering and a Doctor of Philosophy Degree in Chemistry.

That I am an inventor in over 130 U.S. patents, many hundreds of foreign patents and numerous pending patent applications in many diverse fields including technologies in the electrical, electronic, chemical and mechanical areas, as well as in a plurality of patents in the field of fasteners.

That although I am a registered patent agent, my vocation and evocation is primarily as an inventor.

That I have spent a number of years in the fastener technology developing my inventions resulting in the filing of numerous patent applications.

That I am directly recognized in the fastener technology by my contemporaries such as evidenced by citation of one of my fastener patents on column 2, line 22 of Gannuzzi USP 5,447,005 (applied in rejection of claims in the present patent application).

That I am an inventor of commercially successful fasteners including a fastener sold in hardware stores throughout the country and another series of considerably more important fasteners which are employed in manufacture of new cars made by Daimler/Chrysler Corporation, General Motors Corporation as well as Ford Company.

That I am a co-inventor of patent application Serial No. 10/729,152 entitled Spring Fastener Having Multifunctional Barbs Originating at the Side of the Neck or Leg Portion to which this Declaration is directed.

That I have read the final Office Action Summary dated February 15, 2005, in which the Drawings filed on September 28, 2004 are objected to by the Examiner, without any explanation at all in the attached Detailed Action.

That based on the fact that the exact same drawings filed on September 28 were accepted in the Office Action dated November 12, 2004, and the lack of explanation in the Detailed Action dated February 15, 2005, I conclude with reasonable certainty that the wrong box has been inadvertently checked in the Office Action Summary dated February 15, 2005, and therefore, said Drawings are actually accepted in both Office Actions.

That I have read in detail a final Office Action dated February 15, 2005 rejecting claims under 35 USC 103(a) based on Giannuzzi USP 5,447,005 in view of DeWitt USP 5,367,751.

That first and foremost I am convinced, as it will be explained in more details at following portions of this Declaration, that the Office does not interpret my language properly according to the Specification and Figures of my Patent Application.

That I consider it necessary to point out in accordance with my patent application the meaning of "**side neck portion**" (or expressed another way "side of a neck portion") and the meaning of "**side leg portion**" (or expressed another way "side of a leg portion") are not as interpreted by the Office.

That it seems necessary to stress that I clearly point to the various sections of my patent application referencing "**side**". In the specification (page 12, line 29 to page 13, line 9) of the parent application, referring to Figure 1, it is stated:

The fastener 10, further comprises a **neck 18** which has an opening 20 and two **side neck portions 22**. The neck 18 extends from the lower side 16 of the substantially flat head portion 12 at a substantially right angle with respect to the substantially flat head portion 12.

The fastener 10, also comprises two substantially flat legs extending from the neck 18. **Each leg 24** has an inner surface 26 (see Figure 4). The two inner surfaces 26 of the two legs 24 are at an initial proximity with each other, as shown in Figure 1, but the legs expand in opposite directions upon inserting through the first hole 11 an expansion member 28, and bringing said expansion member 28 to a contact region 30 of the legs 24. **Each leg also has side leg portions 32**.

That further, the specification (page 15, lines 25-28) of the patent application, referring to Figure 5, undoubtedly distinguishes the **“neck 18”** or **“leg 24”** from the respective **“side neck portion 22”** and **“side leg portion 32”**, by stating:

In still a different embodiment, better illustrated in Figures 5 and 6, the barbs 36 have an origin 38 at the **side neck portion 22** or the **side leg portion 32**. The barbs 36 are initially directed outwardly away from the **legs 24**, and then inwardly toward the legs 24 and the **neck 18**.

That it is my belief that in accordance with the definition of the parent application of **“side”** the Office has an incorrect interpretation of Giannuzzi.

That it is my belief that the Office considers the elements 12/12A and 13/13A themselves (called blades) shown in Figures 1-3 of Giannuzzi as **“side leg portions”** and **“side neck portions”**, which is in error since these elements are **“legs”** and **“necks”** in accordance with the terminology of my patent application, as described above.

That it is my belief that the Office considers the whole element 12 as one “side neck portion”, and the whole element 13 as the other “side neck portion”, while the whole element 12A as one “side leg portion”, and the whole element 13A as the other “side leg portion”.

That equivalent "side neck portions" and "side leg portions" of Giannuzzi in accordance with terminology of my patent application are the portions of the elements 12/12A and 13/13A in the vicinity of the ends or edges of said elements, and not the whole elements 12/12A and 13/13A, as considered by the Office.

That pages 2 and 3 of the Office action set forth in detail the disclosure of Giannuzzi including the deficiency of this publication in the following wording:

However, Giannuzzi fails to disclose that the barbs comprise a proximal barb section starting from at the origin and being directed outwardly away from the side neck portion and the side leg portion respectively and a distal barb section ending at the front point and being directly inwardly toward the side neck portion and the side leg portion respectively regardless is (sic) the fastener is or not in an expandable position and also that between the proximal barb section and the barb distal end is formed an angle.

That therefore a rewriting of this Office position to only add numbered indents is:

However, Giannuzzi fails to disclose that:

- 1) the barbs comprise a proximal barb section starting from at the origin and being directed outwardly away from the side neck portion and the side leg portion respectively and
- 2) a distal barb section ending at the front point and being directly inwardly toward the side neck portion and the side leg portion respectively

- 3) regardless is (sic) the fastener is or not in an expandable position and also
- 4) that between the proximal barb section and the barb distal end is formed an angle.

That, in view of this deficiency in Giannuzzi, the Office rejection relies upon the disclosure of DeWitt and sets forth the following conclusion in a combination of Giannuzzi and DeWitt:

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to have an angle between a proximal section and a distal end of a barb, as taught by DeWitt, into a device as described by Giannuzzi, in order to guide and secure the fastener.

That, in reply to the grounds of rejection based on Giannuzzi and DeWitt, a traversal has been made, of record, in a paper dated December 2, 2004 (entitled Amendment and Response to Office Action) with the following wording present in the paragraph bridging pages 2 and 3 as follows:

If Giannuzzi's tabs had an origin at a region of a side portion, Giannuzzi's fastener would not be functional, because such tabs, like the barbs of the instant invention for example, would not be disposed in a position to allow them to hold the screw 23 (Giannuzzi's Figures 6 and 7, and column 5, lines 40-68).

That a complete reading of this paragraph bridging pages 2 and 3 in the December 2, 2004 traversal is as follows:

In contrast, Giannuzzi's tabs have an origin in a **central region** of just the legs, and **not on side portions**, as also shown clearly in all Giannuzzi's Figures. If Giannuzzi's tabs had an origin at a region of a side portion, Giannuzzi's fastener would not be functional, because such tabs, like the barbs of the instant invention for example, would not be disposed in a position to allow them to hold the screw 23 (Giannuzzi's Figures 6 and 7, and column 5, lines 40-68). Thus, Giannuzzi's disclosure leads a person of ordinary skill in the art away from

making fasteners with barbs originating at the **side portions** of the neck and/or the legs, and therefore, leads a person of ordinary skill in the art away from the instant invention.

That, to restate the wording of a lack of functionality of Giannuzzi's fastener with relocation of Giannuzzi's tabs, Giannuzzi's fastener would be inoperative for the purpose of the patentee's reverse wedge truss-forming anchor.

That, in support of this position of inoperability, I state again, in different words, that if Giannuzzi's tabs 15 and 17 (Figures 1-3) were positioned close to the edges (which in the terminology of my application are the side portions) of blades 12 and 13 or their respective triangular sections 12A and 13A, then apparently the screw 24 (Figures 6 and 7), which is directed from the conical guide cavity 14 (Figures 1-3) to points P1 and P2 (Figures 1-3) would not engage to the tabs 15 and 17, which constitutes Giannuzzi's invention, and therefore, Giannuzzi's wall anchor would be inoperable.

That regarding the position of the Office Action that it would have been obvious to one of the ordinary skill in the art at the time the invention was made to have an angle between a proximal section and a distal end of a barb, as taught by DeWitt, into a device as described by Giannuzzi, in order to guide and secure the fastener, I state that on the contrary, a person of ordinary skill in the art would apparently avoid by any possible means to put any bends in order to form an angle as taught by DeWitt on the tabs 15 and 17 (referred to as "barbs" by the Office) of Giannuzzi's device, because such bends would make difficult or even totally prevent the opening of blades 12 and 13 as the bent tabs 15 and 17 would be forced to move out of the complementary slot 18 (Figures 1, 3, and 5) in order to allow the opening of said blades. Therefore, such combination would be not just unnecessary, but undesirable, rendering the allegations of the Office erroneous and in full error.

That the above statements as well as statements at later sections of this Declaration are fully supported by **MPEP 2143.01**, where it is clearly stated:

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make

the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

And further:

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

That the above statements as well as statements at later sections are further fully supported by MPEP 2145 X, where it is clearly stated:

C. Lack of Suggestion To Combine References

As discussed in MPEP § 2143.01, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine reference teachings. The Federal Circuit has produced a number of decisions overturning obviousness rejections due to a lack of suggestion in the prior art of the desirability of combining references, as discussed in the aforementioned section.

D. References Teach Away from the Invention or Render Prior Art Unsatisfactory for Intended Purpose

In addition to the material below, see MPEP § 2141.02 (prior art must be considered in its entirety, including disclosures that teach away from the claims) and MPEP § 2143.01 (proposed modification cannot render the prior art unsatisfactory for its intended purpose or change the principle of operation of a reference).

That in the present case there is no suggestion or motivation, either in the Giannuzzi or DeWitt references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine said reference teachings and derive the present invention.

That the United States Court of Appeals for the Federal Circuit overturned many obviousness rejections of the Board of Patent Appeals and Interferences in *RE Dembiczack*

(case 98-1498, Serial No. 08/427,732), which obviousness rejections were of similar nature of the obviousness rejections the Office imposed in the present application.

That I note the Office rejection takes a contrary position in the location of the tabs (referred to as barbs by the Office) of Giannuzzi set forth in the last complete paragraph on page 5 as follows:

Regarding applicant's arguments that Giannuzzi fails to disclose that the barbs have an origin at a region selected from the side neck portion and the side leg portion (Page 3 Line 27), Giannuzzi clearly illustrates that the barbs 15 and 17 has an origin at a region of selected from the side neck portion and the side leg portion (Figures 5 and 6). (emphasis added)

That I consider the above statement to be in clear error as explained earlier regarding the difference between the definitions of “leg”, “neck”, “side leg portion” and “side neck portion” according to the specification and Figures of my application and its misinterpretation by the Office as applied to Giannuzzi's disclosure.

That I further consider the above statement to be in clear error for two additional distinct reasons:

- (1) the above statement is directly contrary to the earlier statement in the Office position concerning a deficiency in Giannuzzi and
- (2) the above statement is in clear error and an incorrect interpretation both of Giannuzzi and all claims under prosecution.

That for reason (1) of contradictory statements in the Office position, the following is a side by side comparison of the Office's direct statement (edited to add a numbered indent) of the deficiency of Giannuzzi and at the same time what Giannuzzi illustrates.

Office Statement #1

However, Giannuzzi fails to disclose that

- 1) the barbs comprise a proximal barb section starting from at the origin and being directed outwardly away from the side neck portion and the side leg portion respectively.

Office Statement #2

Giannuzzi clearly illustrates that the barbs 15 and 17 has an origin at a region of selected side neck portion and the side leg portion (Figures 5 and 6).

That I state contrary Office positions are present in Giannuzzi's failure to disclose "a proximal barb section starting from at the origin and being directed outwardly away from the side neck portion and the side leg portion" vs. Giannuzzi's illustration of barbs 15 and 17 having "an origin at a region selected from the side neck portion and side leg portion".

That I consider the statement of Giannuzzi barbs 15 and 17 to be in clear error and an uncorrected interpretation both of Giannuzzi and all claims under prosecution for the reasons discussed above.

That I note the following statement on page 6 of the Office rejection that an angle between a proximal barb section and a barb distal is a design consideration in the following wording:

...the current specification and/or claims does not provide any reason for having the barbs with an angle between the proximal barb section and the barb distal, the limitation will be considered as a design consideration.

That I consider the position of a design consideration to be in clear error, which is supported by the specification for the reasons clarified in the three last statements of the instant Declaration, and have not to be repeated at this point. Regarding the claims, they have to incorporate restrictions, but not necessarily the reasons why said restrictions are present.

That, accordingly, I consider the complete paragraph on page 6 of the Office rejection to be in error:

As to applicant's arguments that it would not be obvious to combine the teachings of DeWitt to modified the device as described by Giannuzzi (Page 4 Line 16), since the current specification and/or claims does not provide any reason for having the bars with an angle between the proximal barb section and the barb distal, the limitation will be considered as a design consideration. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have an angle between a proximal section and a distal end of a barb, as taught by DeWitt, into a device as described by Giannuzzi, in order to guide and

secure the fastener. (underlined portion is quoted above)

That, I further note in the discussion of DeWitt and its combination with Giannuzzi on the paragraph bridging pages 3 and 4 of the Office rejection the following wording:

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to have an angle between a proximal section and a distal end of a barb, as taught by DeWitt, into a device as described by Giannuzzi, in order to guide and secure the fastener.

That I consider such statement to be incorrect for the reasons already stated earlier.

That I note the Office rejection on the paragraph bridging pages 3 and 4 sets forth the following concerning the disclosure and teachings of DeWitt:

DeWitt teaches that it is well known in the art to have a barb (42) that includes a proximal barb section starting from at the origin and being directed outwardly away from a side neck portion (32) and a side leg portion (the lower section of 32 below 36) respectively and a distal barb section sending at the front point and being directly inwardly toward the side neck portion and the side leg portion respectively.

That I consider the wording of “well known” to be a misnomer, but more importantly the previous traversal of December 2, 2004 states that DeWitt’s elements 42 are not barbs in the following wording:

De Witt’s elements 42 that the Office Action calls barbs (which are not), are actually the distal portion of Witt’s angle shaped element 38, which has also an origin at a central region of De Witt’s device. (emphasis added)

That, DeWitt on column 3, lines 16 to 19, references element 42 as a flat portion forming a locking surface in the wording:

The locking projections 38 include an outwardly tapered portion 40 forming a cam surface and a planar flat portion 42 forming a locking surface.

That I state that an excessively wide planar flat portion 42, forming a locking surface, cannot be considered as a barb as well known to a person of ordinary skill in the art. In the case of DeWitt, barbs are the elements 36, the purpose of which is to prevent easy extraction of the cover panel 10 from the clip 30 (Figure 3) after the vehicle structure has been assembled.

That I state, to reiterate this point, a barb prevents easy extraction of an element while DeWitt's element 42 forms a wide locking surface and, accordingly, is not a barb, as known to any body of ordinary skill in the art.

That I consider that a person skilled in the art to which Giannuzzi pertains directed to a reverse truss-forming wall anchor would not modify its disclosure and teachings based on DeWitt directed to a panel locator and attachment apparatus as explained earlier, since both disclosures are fully irrelevant to my invention as disclosed and claimed.

That I rather consider my invention to be a substantial improvement over prior art fasteners of similar type as mine having barbs 36A on **the side neck portion or the side leg portion**, as illustrated in Figure 1A of the present application. In operation, the prior art fastener 10A is inserted into the slot 42A, but the barbs 36A do not allow said fastener to be removed from the panel 44A (Figure 2A) after the insertion. This explanation can also be found in the specification, page 15, lines 1-5:

In contrast, the prior art barbs 36A, better shown in Figures 1A and 2A, are designed to be disposed under the first part 44A, after the fastener 10A has been inserted into the slot 42A, and permanently engage on the lower surface 54A. Thus, after the fastener 10A has been inserted into the slot 42A, it cannot be removed without damage to either the fastener 10A or to the part 44A.

That I state that the improvement of my invention consists mainly of extending the barbs as shown in Figure 5 of my application in a way to allow the fastener 10 to be easily removed from the panel 44 when the legs 24 are not expanded by an expanding member 28 (Figure 4), such as a screw or bolt for example, inserted through the hole 11. Further, when the expanding member is in position, the barbs 36 tilt and further help to secure the fastener 10 on the panel 44. This explanation can also be found in the specification, page 15, line 25 to page 16, line 26:

In still a different embodiment, better illustrated in Figures 5 and 6, the barbs 36 have an origin 38 at the side neck portion 22 or the side leg portion 32. The barbs 36 are initially directed outwardly away from the legs 24, and then inwardly toward the legs 24 and the neck 18.

The operation of this embodiment is similar to the operation of the previous embodiments with the difference that when the fastener 10 is being inserted into the slot 42, the outwardly directed portions of the barb 36 are initially squeezed, and finally the inwardly directed portions of the barbs 36 find themselves pushing against the lower edges 50 of the slot 42, thus engaging the fastener 10 on the first part 44 through the slot 42.

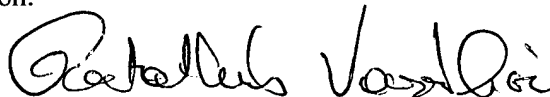
When the second part 56 (see Figure 4) is secured on the fastener 10 and the first part 44, as already described in the earlier embodiments, the barbs 36 are tilted and assume a position as illustrated in Figure 7, and further support the attachment of the second object onto the first object. Of course the degree of tilting, may vary, and what is shown in Figure 7 is just an example.

The angle A (Figure 6) is preferably larger than 90 degrees. In any event, it should preferably be such that the fastener can be removed from the first object without destruction of said fastener, when the removal takes place solely from the side of the first object, wherein the head of the fastener is positioned.

When it is desired to disassemble the miscellaneous components, the expanding member 28 is removed, which frees the second part 56 from the assembly of the fastener 10 with the first part 44. The legs, assume their initial non-expanded position, and the barbs 36 resume the un-tilted position illustrated in Figure 6. By pulling the fastener 10 away from the first part 44 (from the side of the upper surface 52) the barbs 36 slide initially on the lower edges 50 toward each other, then over the side edges 48, and finally liberate the fastener 10 from the slot 42 and the first part 44, without any damage to the fastener and/or the first part 44.

That I state that if the barbs of my invention were in the **central portion** of the **legs** or **neck**, my system would have been inoperable, since this barb positioning with an angle between the proximal and distal barb portions would significantly interfere with the full insertion of the expanding member and its operation. In addition, as it has already been stated and explained, if Giannuzzi' s barbs were at **the side neck portion** or **side leg portion**, with or without proximal and distal barb portions, Giannuzzi' s system would have been inoperable. In addition to other important considerations, it is my belief that just these two simple facts clearly demonstrate that the position of the Office is in error.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true: and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.



Eustathios Vassiliou

Date: March 30, 2005